UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK	
NICOLE ZE'TONE :	Civil Action No.08 Civ. 0495 (DC):
Plaintiff,	REPLY TO COUNTERCLAIMS
-against-	
KRIZIA, S.p.A. and FRANCESCO VITALE,	
Defendants.:	

Plaintiff and Counterclaim Defendant Nicole Ze'tone, by her attorneys, Pavia & Harcourt LLP, for her reply to the counterclaims asserted by Defendants Krizia S.p.A. ("Krizia") alleges as follows:

- 1. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51, except admits that, upon information and belief, Krizia S.p.A. is an Italian-based company engaged in the sale of garments and accessories.
  - 2. Admits the allegations of paragraph 52.
  - Ze'tone denies the allegation of paragraph 53 except admits that she was employed by Krizia at its New York store during the period January 2006 to June 2007.
  - 4. Denies the allegation of paragraph 54.
  - 5. Denies the allegations of paragraph 55.
  - 6. Denies the allegations of paragraph 56.
  - 7. Denies the allegations of paragraph 57.
- 8. Ze'tone repeats and realleges each and every allegation contained in paragraphs 1-8 above as if fully set forth herein.

- 9. Admits the allegations of paragraph 59.
- 10. Ze'tone denies the allegations of paragraph 60 except admits that Krizia entered into an agreement regarding the installation of monitors, and Ze'tone refers to the written contract for its terms.
  - 11. Denies the allegations of paragraph 61.
  - 12. Denies the allegations of paragraph 62.

### AFFIRMATIVE DEFENSES

#### First Affirmative Defense

13. The counterclaims fail to state a claim upon which relief can be granted.

#### Second Affirmative Defense

14. The counterclaims are barred, in whole or in part, by the doctrines of estoppel and waiver.

#### Third Affirmative Defense

15. The counterclaims are barred, in whole or in part, by the doctrine of unclean hands.

#### **Fourth Affirmative Defense**

16. The counterclaims are barred under the applicable statute of limitations.

#### Fifth Affirmative Defense

17. Subject to proof, Krizia has failed to mitigate its damages, if any.

#### Sixth Affirmative Defense

18. The counterclaims should be dismissed for failure to name an indispensable party under Fed. R. Civ. P. 19.

## WHEREFORE, Ms. Ze'tone requests the following relief

with regard to Krizia's counterclaims:

- 1. Dismissal of each counterclaim with prejudice;
- Attorneys' fees, costs, and expenses incurred in the defense of the 2. counterleaims.
  - Such other and further relief as is just and fair. 3.

Dated:

March 10, 2008

New York, New York

PAVIA & HARCOURT LLP

Adam D. Mitzner (AM-8325) Jonathan A. Selva (JS-2006)

600 Madison Avenue New York, New York 10022 (212) 980-3500 (212) 980-3185

Counsel to Plaintiff Nicole Ze'tone

UNITED STATES DISTRIFOR THE SOUTHERN DIS	STRICT OF NEW Y		
NICOLE ZE'TONE,		:	Civil Action No.08 Civ. 0495 (DC):
	Plaintiff,	:	AFFIDAVIT OF SERVICE
-agair	nst-	: :	
KRIZIA S.p.A. and FRANC	CESCO VITALE,	:	
	Defendants.	:	
		X	
STATE OF NEW YORK	) : ss.:		
COUNTY OF NEW YORK	)		

Max Smith, being duly sworn, deposes and says:

Deponent is not a party to the within action, is over 18 years of age, and resides in Bronx, New York. On March 11, 2008, deponent served a true copy of the REPLY TO COUNTERCLAIMS, upon the following counsel of record:

# FEDERAL EXPRESS TRACKING NO. 7998 1688 1402

Richard P. Altieri, Esq. Altieri & Esposito, LLC 420 Fifth Avenue 26<sup>th</sup> Floor New York, NY 10018-2729 Attorney for Krizia S.p.A.

by depositing a true copy thereof, enclosed in a post-paid wrapper, in an official depository under

the exclusive care and custody of Federal Express, for overnight delivery, prior to the latest time designated by that service for priority overnight delivery. Deponent has also served true copies of the REPLY TO COUNTERCLAIMS upon Richard P. Altieri, Esq., Attorney for Krizia S.p.A. by e-mail to the following e-mail address: raltieri@ae-law.com\_

MAX SMITH

Sworn to before me this 11<sup>th</sup> day of March, 2008

NOTARY PUBLIC

MELINDA S. LIPSKY
Notary Public, State New York
No. 01Li495, 182
Qualified in hassau County
Certificate filed in New York County
Commission Expires March 24, 20